IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

MFA.No. 360 of 1998()

OPMV.1832/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TRIVANDRUM
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APPELLANT PETITIONER:

G. SREEKANDAN NAIR, S/O. LATE GOPALA PILLAI, DEEPTHI, HOUSE NO.P.P.XIII/366, NARUVAMOODU P.O., THIRUVANANTHAPURAM DISTRICT, PIN 695 020.

BY ADV. SRI.P.PARAMESWARAN NAIR
SMT.SREELATHA PARAMESWARAN NAIR

RESPONDENTS RESPONDENTS:
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1. **MANAGING DIRECTOR, KSRTC, TRANSPORT BHAVAN, THIRUVANANTHAPURAM 695 023.**

2. **KUNJUKUNJU, S/O. GEORGE, ERIYAN VEEDU, KURUPPANKULANGARA, VADAKKUM MURI CHERTHALA NORTH.**

BY ADV. SRI.V.BHASKARA MENON, SC, KSRTC
SHRI.JOHNSON P.JOHN, SC, KSRTC

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 360 OF 1998

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Dated this the 7th day of March, 2007

J U D G M E N T

Petitioner in O.P(MV) No.1832 of 1994 on the file of the Motor Accidents Claims Tribunal, Thiruvananthapuram is the appellant. Appellant along with his wife was riding a Scooter at about 4.30 p.m. on 5.9.1994. A stage carriage bus belonging to the first respondent and driven by the second respondent came from the rear side and hit on the Scooter in which the appellant was riding. Appellant and his wife sustained injuries. His wife later died. Appellant filed two claim petitions; one for the injuries sustained by him and the other as the legal representative of his wife, who died on account of the injuries sustained by her in the accident. Though the Tribunal found that the appellant is entitled to Rs.6,000/- as compensation for the injuries sustained, the Tribunal awarded only a sum of Rs.5,218/- finding that the appellant was also negligent and Rs.1,06,209/- was awarded as compensation to his deceased wife. Appellant has filed this appeal against the order passed in O.P(MV) No.1832

of 1998 and M.F.A. No. 304 of 1998 against the award passed in O.P(MV) No.1833 of 1998.

2. In M.F.A. No.304 of 1998 a Division Bench of this Court, after hearing both sides, held that the accident had occurred due to the rash and negligent driving of the bus by the driver and the award passed by the Tribunal was confirmed.

3. Learned counsel appearing for the appellant has argued that the compensation awarded by the Tribunal in his case is very meagre and the finding of the Tribunal that the accident had occurred due to the contributory negligence of the appellant is illegal and liable to be set aside. In view of the finding in M.F.A. No.304 of 1998 which is inter partes, respondent is not entitled to raise a contention that the appellant is also responsible for the accident. In that appeal the Division Bench held that the accident occurred due to the sole negligence of the second respondent, driver of the bus alone. So the finding of the Tribunal that there is contributory negligence on the part of the appellant has to be set aside. The Tribunal has awarded a sum of Rs.6,000/- to the appellant as compensation. Record shows that the petitioner sustained only contusion 1 cm. lateral end of the

forehead right side front of the right knee and some minor abrasions. There was no bonee fractures. Though the appellant raised a contention that he lost 3 teeth, no medical evidence was adduced. The contention that he was undergoing Ayurvedic treatment was not established. So the finding of the Tribunal that the appellant is entitled to Rs.6,000/- is perfectly correct and does not call for any interference.

In the result, the M.F.A. is allowed in part. The finding of the Tribunal that the appellant is entitled to Rs.6,000/- with 12% interest from the date of award till date of realisation as compensation for the personal injuries sustained by him is confirmed. The finding that the appellant was also negligent is set aside. The entire amount shall be paid to the appellant by the respondents with interest ordered by the Tribunal within two months from the date of production of a copy of this judgment.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 360 OF 1998

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J U D G M E N T

7TH MARCH, 2007